

November 7, 2005

**DECISION AND ORDER**  
**OF THE DEPARTMENT OF ENERGY**

**Appeal**

Name of Petitioner: Cliff Jenkins

Date of Filing: October 12, 2005

Case Number: TFA-0122

On October 12, 2005, Cliff Jenkins (Jenkins) filed an appeal from a determination issued to him on August 22, 2005 by the Department of Energy's (DOE) Office of Legacy Management (LM). In that determination, LM responded to a request for documents that Jenkins submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. LM determined that it did not have any documents responsive to Jenkins' request. This appeal, if granted, would require LM to perform an additional search and release any responsive documents or issue a new determination justifying the withholding of those documents.

**I. Background**

Jenkins filed a request under the FOIA for "copies of any documentation, contracts, notes on verbal agreements, or Memorandums of Understanding for Union Carbide, U.S. Vanadium, Vanadium Corporation of America or the town of Uravan, CO." Letter from Michael Owens, LM, to Cliff Jenkins (September 1, 2005) (Determination Letter). LM determined that the requested documents did not exist. LM stated, "According to our information the Atomic Energy Commission (AEC) never owned or managed the property. They only contracted for the purchase of material." Determination Letter. As a result, LM denied the request and Jenkins filed the present appeal.

**II. Analysis**

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. United States Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). "The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials."

*Miller v. United States Department of State*, 779 F.2d 1378, 1384-85 (8<sup>th</sup> Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Ms. Doris M. Harthun*, 28 DOE ¶ 80,282 (2003).

As an initial matter, we note that in his appeal, Jenkins requested documents which he did not include in his initial request to LM. Specifically, Jenkins stated,

In addition to the contract cited [sic] above, I am requesting any indemnification agreements that may exist, or may have existed between Union Carbide, U.S. Vanadium Corp. or the Vanadium Corporation of America and the Department of Energy either negotiated directly with Union Carbide or inherited by DOE and negotiated by outside agencies.

Letter from Cliff Jenkins to OHA (September 15, 2005) (Appeal Letter). We do not permit requesters to expand the scope of their request on appeal. *F.A.C.T.S.*, 26 DOE ¶ 80,132 at 80,578 (1996); *Alan J. White*, 17 DOE ¶ 80,117, 80,539 (1988); *see also Arthur Scanla*, 13 DOE ¶ 80,133 at 80,622 n.2 (1986). If Jenkins wishes to request this additional information, he must file a new FOIA request seeking those documents.

In reviewing this appeal, we contacted LM to discuss the initial search. LM informed this office that the search involved “electronic and paper finding aids for both the LM active and inactive record holdings in the custody of the LM Grand Junction Office and the Federal Records Centers. This process included key word searches ... review of paper indexes, and contact with a retired AEC subcontractor who was directly responsible for the AEC uranium mining and milling program.” Electronic Mail Message from Sheila Dillard, LM, to Diane DeMoura, OHA (October 26, 2005). Based on this information, we find that LM conducted a search reasonably calculated to reveal records responsive to Jenkins’ initial request and, therefore, was adequate. However, based on new information Jenkins provided in his appeal, LM has informed us that it has located additional records which may be responsive to Jenkins’ request. Electronic Mail Message from Sheila Dillard, LM, to Diane DeMoura, OHA (October 19, 2005).

Accordingly, this appeal is granted in part and this matter is remanded to LM to complete a new search using the additional information provided in the appeal. After completing its search, LM is to provide Jenkins with any responsive documents or to issue a new determination justifying the withholding of any responsive information.

It Is Therefore Ordered That:

- (1) The Appeal filed on October 12, 2005 by Cliff Jenkins, OHA Case No. TFA-0122, is hereby granted as set forth in paragraph (2) below, and is in all other respects denied.
- (2) This matter is hereby remanded to the Office of Legacy Management for further proceedings in accordance with the instructions set forth in this Decision and Order.

(3) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: November 7, 2005